REMARKS

Upon entry of the above amendments, claim 1 to 3, 6 to 8, 11 to 13 and 15 will be pending in the present application. Claim2 6, 11-13 and 15 are withdrawn from consideration but subject to rejoinder. Applicants amended claims 1, 2, 6 and 7 to more clearly define the present invention. The specification provides support for the amendments. No new matter has been introduced by the instant amendments.

*Rejection under 35 USC §112, first paragraph:*

1. Claims 1-3, 7 and 8 stand rejected under 35 USC §112, first paragraph as allegedly being non-enabled for the ester. Applicants deleted the term "ester" in claim 1 and 2.

2. Claims 1-3, 7 and 8 stand rejected under 35 USC §112, first paragraph as allegedly being non-enabled for compounds where R is other than unsubstituted alkyl and other than benzofuran optionally substituted with Cl. Applicants thank the Examiner for the courtesy extended to Applicants during an interview on April 15, 2010. Applicants suggested to the Examiner amending the definition of R to "optionally substituted alkoxy" and the Examiner has indicated that he would consider this amendment to meet the enablement requirement if the optional substituents were in commensurate scope with the Examples. Therefore, Applicants amended R to:"$C_1$-$C_7$ alkoxy, optionally substituted with a furyl, benzofuryl, phenyl or thiazolyl; each of which is optionally substituted with halo; linear, branched or cyclic lower alkyl; or with a linear, branched or cydic lower alkoxy". This amendment is supported by Examples 18, 19, 20 and 21 wherein R is unsubstituted alkoxy; Examples 154 and 155 wherein R is alkoxy substituted with substituted benzofuryl; Examples 35-39 wherein R is alkoxy substituted with furyl, Example 135 wherein R is alkoxy substituted with substituted thiazolyl; Example 40 wherein R is aikoxy substituted with phenyl; Example 42-79 wherein R is alkoxy substituted with benzofuryl, which is further substituted with halo groups, Example 80-103 wherein alkoxy is substituted with benzofuryl, which is further susbtituted with alkoxy; Example 104-108 wherein alkoxy is substituted with benzofuran, which is further substituted with alkyl.

Further support to this amendment can be found on page 5, 1st paragraph in the prefered definition of R; on page 3, paragraph 4 and 5 in the definition of alkoxy and alkyl.

Applicants assert that in view of the above arguments, the claims as amended are fully supported by the specification and by the examples.

Applicants respectfully request withdrawal of the 35 USC §112, first paragraph rejections.

*Rejection under 35 USC §103*:

Claims 1, 2, 3, 7 and 8 stand rejected under 35 USC §103(a) as being obvious over US 7,078,419. Examiner asserts that US '419 teaches positional isomer of compounds of the instant invention. Examiner asserts that compounds of US '419 contain an O-heteroaryl (O-pyridine or O-pyrimidine) at the 6-position of the indole where Applicants compounds's contain a R group at the 4-position of the indole. Examiner also states that the isomer is expected to be prepared by the same method and have the same property.

Applicants respectfully disagree that it is well established that positional isomers are prima facie obvious even in the absence of teaching to modify. "For a claimed compound to be prima facie obvious over the prior art compound with structural similarity, the prior art must suggest making the specific structural modifications necessary to arrive at the claimed invention. " Takeda v alphapharm, 492 F. 3d 1350. Applicants assert that there is no motivation to move the O-pyridine or O-pyrimidine group from the 6-position of the indole to the 4-position of the indole. However, to expedite prosecution, Applicants amended the definition of R to "$C_1$-$C_7$ alkoxy, optionally substituted with a furyl, benzofuryl, phenyl or thiazolyl; each of which is optionally substituted with halo; linear, branched or cyclic lower alkyl; or with a linear, branched or cyclic lower alkoxy". US '419 does not teach a compound wherein the indole is substituted at the 4-position with an alkoxy or an alkoxy further substituted with furyl, benzofuryl, phenyl or thiazolyl. US '419 has a limiting feature of 6-susbtitution with O-pyridine or O-pyrimidine. Applicants amended scope for R requires at least 2 atoms between the indole and the furyl, phenyl, benzofuran or thiazole substituent, whereas US '419 has one atom, an oxygen atom, between the indole and the pyridine or pyridimidine.

Someone of ordinary skill in the art would have had no motivation to replace a pyridine with fyran, benzofuran, phenyl or thiazole, in addition to moving the group from position 6 to position 4, in addition to adding an extra atom or atoms linker between the indole and the heteroaryl substituent. Someone of ordinary skill in the art would have had no motivation or suggestion to combine these three structural modifications in order to arrive at the instant claimed invention, nor would there be expectation of success.

Applicants respectfully request withdrawal of the 35 USC §103(a) rejection.

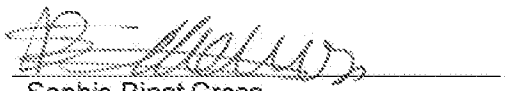
*Conclusion:*

Applicants have addressed each and every issue set forth by the Examiner. Applicants respectfully submit that the claims are in good condition for allowance.

Applicants respectfully request rejoinder of the method and process claims of commensurate scope to the composition of matter claims upon allowance of claims directed to the elected invention, e.g., Applicants respectfully request rejoinder of the subject matter corresponding to Groups (VIII) and (IX) upon allowance of the claims embodying the elected invention.

If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at 617-871-5027.

Respectfully submitted,



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Date: April 19, 2010